

SB CIVIL MISC. APPEAL NO. 478/2004
(JUGAL KISHORE v LAXMI NARAIN.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 4.8.06.

Mr. M.M. Ranjan for the appellant.
Mr. B.L. Agrawal for the respondents.

The appellant has challenged the order dated 13.1.2004 passed by the Addl. District Judge No.5, Jaipur City, Jaipur, whereby the learned Judge has fixed the provisional rent under Section 7(1) of the Rajasthan Premises (Control of Rent & Eviction) Act,1950 (hereinafter to be referred to as 'the Act') and has enhanced the provisional rent from Rs. 1,300/- to Rs. 9,100/- per month.

The brief facts of the case are that the plaintiff-respondent had filed suit under Section 6 of the Act for fixing the standard rent. In the plaint, he alleged that the premises were rented out to the defendant on 23.10.81 @ Rs. 1062.50 paisa per month. The said premises are situated at New Grain Mandi, Chandpole Bazar, Jaipur. The super built-up area of the shop is 391.81 sq. meters. According to the plaintiff the rental value of the shop is Rs. 20,000/-. Therefore, the standard rent should be fixed at Rs. 20,000/- per month. In order to support his case the plaintiff submitted a report prepared by the

valuer Mr. Sanjay Gupta & Associates, in which it was disclosed that the value of the property is Rs. 20 lacs. Therefore, according to the plaintiff, the provisional rent should be fixed at Rs. 9,100/- per month. The defendant filed his written statement, wherein he denied the contentions raised by the plaintiff. After hearing both the parties, the learned Judge was pleased to pass the impugned order as aforementioned. Hence this appeal before us.

Mr. M.M. Ranjan, the learned counsel for the appellant, has challenged the validity of the valuer's report and has tried to point out many lacune and weaknesses in the said report. According to the learned counsel an exorbitant provisional rent has been fixed as the rent has been increased from 1,300/- to Rs. 9,100/- per month.

On the other hand, Mr. B.L. Agrawal, the learned counsel for the respondent, has argued that according to Section 7(5) of the Act in case the provisional rent is on the higher side, at the time of fixing of the standard rent, the amount so paid, can be adjusted by the Court. Therefore, even if the contention of the plaintiff were accepted for the sake of arguments, according to Section 7(5), all amounts paid as provisional rent shall be adjusted towards standard

rent finally decided. Therefore, according to the learned counsel whatever amount is paid by way of provisional rent, the same can be adjusted while deciding the standard rent. He has further referred to the judgments delivered by this Court in the case of Vinod Kumar Sharma Vs. Sajjanmal Lodha (SBCMA No. 2075/2004 decided on 21.4.05), Man Mohan Das Mundra & Anr. Vs. Mrs. Shiv Kunwar & Ors. (SB Civil Writ Petition No. 8338/04 decided on 8.2.06) and to the case of Mahesh Bhatiya & Ors. Vs. Saraogi Mansion Estate Pvt. Ltd. & Ors. (2004(3) DNJ (Raj.) 1047).

We have heard the learned counsels for the parties and have perused the impugned order.

According to Section 7(1) of the Act, "in a suit filed under Section 6 of the Act, the Court shall forthwith make an order, fixing in summary manner, a provisional rent for the premises in question." Thus, the trial court has ample power to fix the provisional rent for the premises in question. According to sub-section 5 of Section 7 all amounts paid as provisional rent shall be adjusted towards standard rent to be paid at the time of final decree. Hence, what is conceptualised by Section 7 is a power given to the trial court to determine the rent for the time being (provisionally) to be paid by the

tenant to the landlord during the pendency of the suit. Such a determination, obviously, is not a final determination but is only an interim determination of the rental value to be paid by the tenant to the landlord. In the instant case, the learned trial court has looked at the rent note between Chetan Jain and Smt. Rajkumari. The said rent note is concerning a portion of the same building in which the property in dispute exists. While the property in dispute is on the ground floor, the said rent note refers to the property which is on the third floor situated in the same building. According to the rent note the tenant in the said property was paying a rent of Rs. 2,871/- per month. The said rent note is dated 15.9.2002. The learned Judge has also relied upon the report submitted by the valuer Mr. Sanjay Gupta & Associates. In case there are any lacunae in the said report, the appellant is free to point them out during the course of trial and to cross-examine the valuer when he is produced in the witness-box. Repeatedly, this Court has abstained from interfering in fixation of provisional rent (referred to Mahesh Bhatiya (supra), Vinod kumar Sharma (supra) and Man Mohan Das Mundra (supra)).

In the result, this Court is not inclined to interfere with the

impugned order passed by the learned Judge. There is no merit in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.